Michigan Journal of International Law

Volume 26 | Issue 1

2004

Methods of Power for Development: Weapons of the Weak, Weapons of the Strong

John Braithwaite
Australian National University

Follow this and additional works at: http://repository.law.umich.edu/mjil

 Part of the International Trade Law Commons, and the Public Law and Legal Theory Commons

Recommended Citation

John Braithwaite, *Methods of Power for Development: Weapons of the Weak, Weapons of the Strong*, 26 Mich. J. Int'l L. 297 (2004).
Available at: http://repository.law.umich.edu/mjil/vol26/iss1/10

This Article is brought to you for free and open access by the Journals at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

METHODS OF POWER FOR DEVELOPMENT: WEAPONS OF THE WEAK, WEAPONS OF THE STRONG

*John Braithwaite**

I. BEYOND REALISM: HOW DOES AMERICAN POWER WORK?..... 298
II. THE SEVEN ELEMENTS OF STATE EFFECTIVENESS IN GLOBAL POLITICS 300
A. *Concentrate Nodally the Power under Your Direct Control*..... 300
B. *Have a Big Stick and Threaten to Use it*..... 302
C. *Have a Responsive Regulatory Strategy*..... 302
D. *Networked Governance*..... 305
E. *Be Creative and Assertive at Nodes of Networked Governance*..... 307
F. *Concentrate Technical Competence at Nodes*..... 310
G. *Shift Forums*..... 310
III. CAN DEVELOPING COUNTRIES MOBILIZE THESE SEVEN DIMENSIONS OF POWER?..... 311
A. *Concentrate Nodally the Power under Your Direct Control*..... 311
B. *Have a Big Stick and Threaten to Use It*..... 320
C. *Have a Responsive Regulatory Strategy*..... 322
D. *Be Creative and Assertive at Nodes of Networked Governance*..... 325
E. *Concentrate Technical Competence at Nodes*..... 326
F. *Shift Forums*..... 327
IV. CONCLUSION..... 329

Peter Drahos and I conducted a study during the 1990s on global business regulation, interviewing more than five hundred key players in approximately twenty globalizing business regulatory regimes. Results from that study are used in this paper to inform the identification of seven elements of American power in global governance. The paper then poses the question whether those elements can be acquired by developing countries.

Regulatory theory is used to explain how American power works in the world system. It works by networking corporate and state power with

* Australian Research Council Professorial Fellow; Regulatory Institutions Network, Australian National University, Canberra; Ph.D., Queensland University (1977). The author would like to thank Peter Drahos, Declan Roche for comments on this paper and for permission to use Drahos's as yet unpublished networked pyramid and to Sascha Walkley for research assistance.

power in civil society. Particularly important in networked information capitalism is the power that arises from concentrating expertise at crucial nodes of governance. Mostly the United States has its way through dialogue led by experts who are analytically sophisticated and through the deployment of a responsive regulatory pyramid. It is reluctant to fire the big guns that underwrite its realist power.

George Monbiot provides an interesting approach for poor nations to threaten their big stick of "owning" the rich nations' banks.[1] Peter Drahos supplies insights into how developing countries can display a responsive enforcement pyramid of networked governance. The power of rich nations sometimes crumbles because their own largest corporations and NGOs can be enrolled to defect to the cause of poor nations. This allows in an era of networked governance, for weapons of the weak to become formidable.

I. BEYOND REALISM: HOW DOES AMERICAN POWER WORK?

One of the empirical questions addressed by the Braithwaite and Drahos study was: Who were the most influential shapers of global regulatory regimes?[2] The remarkable empirical finding was that the single most influential actor nominated across these regimes was the United States! The second most economically powerful state of the 1990s (when the interviews were conducted)—Japan—was reported to be much less influential than the U.S. In not one of the regimes studied did any informant think Japan exerted more influence than the U.S., and in a minority of regimes, the European Union was reported to be more influential than the U.S., at least for some periods of the history of these regimes. More often, however, the European Union was construed as a follower in the wake of U.S. power rather than as a proactive shaper of regimes. Overall the European Union was less likely to be regarded as influential and in general was seen as less influential than the United States at the moments that mattered.

Realist international relations theorists tell us that the results from our study predictably followed the pattern of outcomes expected. In other words, from their perspective, all that tramping around the world to do the empirical work was not necessary to reach such an expected result. Structural realists imagine the world as one billiard table where countries are represented by the various colored balls. Under this metaphor, Japan is a

1. GEORGE MONBIOT, THE AGE OF CONSENT: A MANIFESTO FOR A NEW WORLD ORDER 174–80 (2003).

2. JOHN BRAITHWAITE & PETER DRAHOS, GLOBAL BUSINESS REGULATION (2000) [hereinafter BRAITHWAITE & DRAHOS].

lot less influential than the United States because it is a much smaller billiard ball and so lacks the momentum of the United States to knock other states out of its path. And the European Union is much less powerful because it is not a Westphalian state. Rather than a billiard ball, it is a sack of marbles. There is some truth in such realist metaphorical disparagement of the anti-realist interpretations we drew from our data. Yet structural realist international relations theory actually proffers a simplistic account of the data, even of the particular examples above that offer the core fit to its claims. Take the case of Japan. States like France and the UK that had economies half its size in the 1990s, consistently across regimes exerted much more influence than Japan in the shaping of events. Often Nordic states, with less than a tenth of Japan's realist power, exerted more influence in global regimes. Where Japan was in important senses the dominant economic power, for example as the largest exporter of motor vehicles throughout the 1990s and the owner of much of the automotive manufacturing capability within the United States, Germany, and other major exporting states, it was only a bit player in the global regime for automotive standard setting.[3] A number of informants even thought Korea—admittedly a burgeoning economic power for most of the 1990s, but bankrupt in 1998—was more effectively assertive than Japan in this regime.

This essay posits and explicates the seven elements of global governance revealed by our study that are necessary if states are to shape global regimes:

1. Concentrate nodally the power under your direct control;
2. Have a big stick and threaten to use it;
3. Have a responsive regulatory strategy;
4. Network governance;
5. Be creative and assertive at nodes of networked governance;
6. Concentrate technical competence at nodes;
7. Shift forums when the forum gives the wrong result.

The United States is the pre-eminent economic power in the world because it mobilizes influence across these seven elements more effectively than Japan or the European Union, not just because it is the biggest Westphalian billiard ball on the table. Being a big ball of power certainly helps a great deal with some of these elements, especially the first two. But the main game of power is fundamentally no longer

3. *Id.* at 438–51.

Westphalian, as al Qaeda and Iraq have taught the United States, and as Vietnam and the Soviet campaign in Afghanistan should have taught it decades earlier. Manuel Castells, Rod Rhodes, Anne-Marie Slaughter and others are closer to the mark when they argue that we are in an era of networked governance.[4] And Clifford Shearing and his co-authors may be closer still when they argue that nodal governance deserves more of our attention.[5] A node is a point in time and space where a cluster of actors collaborate to mobilize pooled resources to tie together strands in Castellian networks of power.

Stewart Clegg sees nodes as important in fixing "circuits of power" in pre-modernity and earlier modernity as well as today.[6] For example, towns and trade fairs grew as nodes of private (corporate and guild) governance that resisted feudal restrictions on commerce, production and trade. Starting as minor nodes of power, towns "organizationally outflanked" the central locus of feudal power around the court. Later still, tiny administrative nodes grew, in nineteenth century Prussia for example, to become central state bureaucracies that organizationally outflanked both cities and royal courts. It could be argued that even transformations that in the end crush competing nodes of governance—like Prussian bureaucracy—start out as modest nodes that mostly enroll the power of others.

II. THE SEVEN ELEMENTS OF STATE EFFECTIVENESS IN GLOBAL POLITICS

A. *Concentrate Nodally the Power under Your Direct Control*

Realist international relations theorists clearly have a point in attributing the less significant power of the EU to its not being a state. While the combined military might of the EU is less than that of the United States, its combined economic might is greater. This is important to note because economic power is more important than military power in the contemporary world for shaping global economic institutions,[7] some in-

4. *See* MARK BEVIR & ROD RHODES, INTERPRETING BRITISH GOVERNANCE (2003); 1–3 MANUEL CASTELLS, THE INFORMATION AGE: ECONOMY. SOCIETY AND CULTURE (2000); ROD RHODES, UNDERSTANDING GOVERNANCE (1997); Anne-Marie Slaughter, *The Real New World Order*, 76 FOREIGN AFF. 183 (1997).

5. *See* Clifford Shearing et al., *Nodal Governance, Democracy and the New 'Denizens': Challenging the Westphalian Ideal*, 30 J.L. & SOC'Y 480 (2003); Scott Burris, Peter Drahos & Clifford Shearing, Nodal Governance as an Approach to Regulation (2003) (unpublished manuscript).

6. *See* STEWART CLEGG, FRAMEWORKS OF POWER 17, 248 (1989).

7. On the other hand, Braithwaite and Drahos found military coercion to be a more important mechanism of globalization than they had expected. It was much less important in the

fluential analyses arguing too that military power is in any case mainly based on economic power.[8] The metaphor of the EU as a bag of marbles rather than a realist billiard ball then has some merit. The EU has not been able to consolidate its power at one center of gravity that enables it to mobilize as much influence as the United States. This realist observation is right even though it is a contingent fact of an historical process where, if the French have their way, European power will become more militarily and economically consolidated in this century. It is indeed a contingent fact that Napoleon was defeated in his consolidation project, while the American Revolution and Civil War prevailed as federating projects that consolidated the exercise of global power.

But bringing consolidated power to bear at a point of influence is also a contingent fact of Westphalian state power. Japan is an example of a state that has been unable to do it well in global forums. States that boxed above their weight globally during the 1990s—like the Nordic States and Australia—were States we would argue, that managed to concentrate their limited power pointedly at nodes of governance that tied wider networks of power together. Drahos and I were unsure about the roots of Japanese enfeeblement.[9] Some part of this story jumps ahead to the fourth element of power discussed below—assertiveness and creativity in nodal dialogue—where command of the imperial language helps the Americans. But the most recurrently mentioned difference between the United States and Japan by our informants, including the Japanese ones, was that in global negotiating forums the Japanese State would often find it impossible to settle in a timely fashion whether it would be the finance (or trade and industry) or the environmental ministry who would speak for Japan at a global forum on say environmental policy. Both might attend the key negotiating forum and both would sit on their hands for fear of causing loss of face to the other. Globally effective Westphalian states, in contrast, have decisive procedures for making a call on what the State's position will be and which bureaucracy will have the job of executing it with maximum assertion in the forums that count most. The United States is quite good at this, Sweden even better. But of course even states that are good at preventing division from disabling

---

final decades of the twentieth century than it had been mid-century and in previous centuries. Military coercion was found, nevertheless, to be fundamental as a mechanism of globalization, being most important with the forms of regulation which have been constitutive of the very possibility of global capitalism. Capitalist institutions of contract, property rights, finance, trade, competition and labour policy were substantially globalized by imperial and colonial conquest dating back to the Romans and even to earlier Greek and Persian empires. BRAITHWAITE & DRAHOS, *supra* note 2, at 532–35.

8. *See, e.g.*, PAUL KENNEDY, THE RISE AND FALL OF GREAT POWERS: ECONOMIC CHANGE AND MILITARY CONFLICT FROM 1500 TO 2000 (1987).

9. BRAITHWAITE & DRAHOS, *supra* note 2.

their power have moments of weakness, which is one reason why tiny Vietnam was able to defeat mighty America in a protracted war and, as we will see below, weak developing countries were able to defeat the U.S. on the Multilateral Agreement on Investment in 1998.

B. *Have a Big Stick and Threaten to Use it*

The neo-conservatives of the current U.S. administration are obsessed with the big stick dimension of U.S. power. They are right to see the big stick as having awesome potential but wrong in their myopic failure to see that overuse of such power enables your enemies to mobilize the other six elements of global power more effectively against you. Nevertheless, the fundamental realist insight is right that the United States has a big stick, but countries such as Togo do not, and therefore it follows that the United States can exercise power in a way Togo cannot. The United States has not only the biggest military sticks, it also makes best use of its economic sanction of denied access to the largest national market. Drahos and I found that, while the United States used bilateral trade sanctions to achieve its objectives more than any other state, it much more often achieved results by less severe measures such as watch-listing. As a pressure creating tool by which the United States names a nation on its "list" for engaging in a practice that is viewed as a threat to U.S. interests, watch-listing poses a heightened risk for the named country because their outing might so enrage the United States polity that it becomes feared the country will slide down a slippery slope to retaliation unless the alleged threatening practice is stopped. Therefore, for the United States it has often proven effective to use watch-listing or the threat of it, followed by escalation to threatening trade sanctions without actually using them, and even more commonly by dialogue without any semblance of threatening watch-listing let alone actual sanctions.[10]

C. *Have a Responsive Regulatory Strategy*

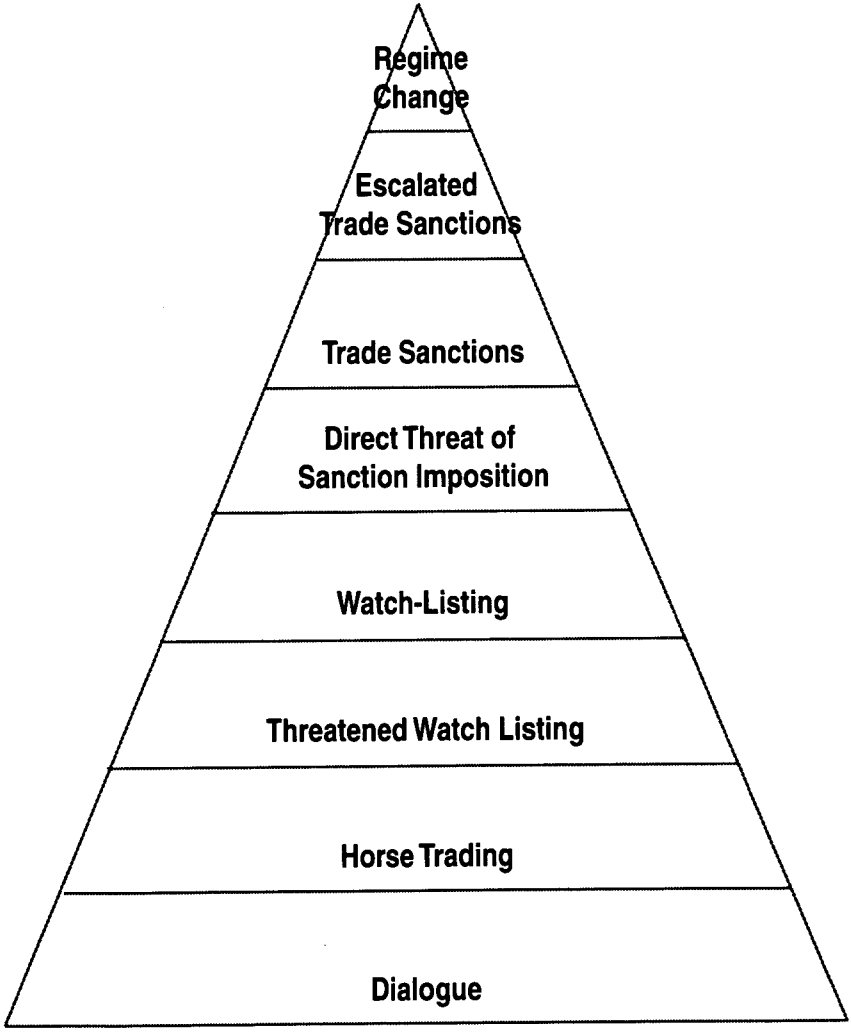
The reason the United States uses trade sanctions more than any other State is that they are a more effective weapon for them than for countries with smaller domestic markets. Even so, the reason that the United States uses trade sanctions with extreme reluctance as a tool of last resort is that U.S. policymakers have mostly had a sophisticated and tacit understanding of responsive regulatory theory. The trade enforcement pyramid described at the end of the last section and represented pictorially in Figure 1 below is more effective than prompt deterrence with sanctions.

---

10. *Id.* at 535–39.

Responsive regulatory theory advises actors who wish to be influential to "speak softly while carrying a big stick." The greatest power comes from being a "benign big gun" rather than a sheriff who shoots up the town regularly. The United States' practice of effective power has not been preemptive. Until the current administration, the United States eschewed its own myths of the righteous sheriff with a quick draw who does not care whether the bad guys are brought in dead or alive.

FIGURE I
THE U.S. TRADE REPRESENTATIVE'S ENFORCEMENT PYRAMID



Under a responsive regulatory pyramid, one attempts first to get things done by dialogue, by appeals to the fairness and mutual interests that would be served by the desired outcomes from the regulatory game. If that fails, there can be escalation to a mix of dialogic appeals to the common sense of one's position, combined with offers of concessions to the interests of the regulated actor—giving them some things they want that are under your control in return for them giving in to the appeal of your argument. The next option is to threaten watch-listing, followed by actual watch-listing. Finally there is the actual imposition of trade sanctions, then more trade sanctions when the initial sanctions prove insufficient. If the policies of a regime become utterly intractable in the view of the United States, regime change is an option. Regimes can be changed either covertly, as with Guatemala in the 1950s, or Chile in the 1970s, or overtly as with Iraq in 2003.

The virtues of the pyramid are various. Because dialogue is cheaper than sanctions or regime change, it is cost-effective to push the action down as low in the pyramid as possible. Powerful actors who have no reluctance about using unbridled coercion undermine their hegemony because power seems more legitimate when it is secured through dialogue alone. Additionally, defiance is more dependable when power is repeatedly exercised at the end of the barrel of a gun.[11] When the only sanctions available to the regulator are draconian, like regime change, regulated actors are prone to think any threat to use them a bluff. On the other hand, when a hierarchy of escalating sanctions is displayed by regulators, they are more credible in communicating an image of invincibility. The incrementalism of escalation seems more inexorable when a pyramid is displayed. Regulated actors scan the hierarchy of escalations in the pyramid, thinking that "we might be able to hold out against this, but if they then escalate higher, we will have to give up our resistance so we might as well give up now to minimize the costs of our resistance." A number of other reasons why a responsive regulatory pyramid is more effective than consistent deterrence have been outlined by Ian Ayres and myself.[12] The claim here is that U.S. diplomats have a good tacit understanding of responsive regulatory theory and achieve more of their objectives responsively than by raw exercises of punitive power.

---

11. *See* Lawrence W. Sherman, *Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction*, 30, J. RES. CRIM. & DELINQ. 445 (1993).

12. *See* IAN AYRES & JOHN BRAITHWAITE, RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE (1992); JOHN BRAITHWAITE, RESTORATIVE JUSTICE AND RESPONSIVE REGULATION (2002).

D. *Networked Governance*

Manuel Castell's three volume magnum opus on *The Information Age* addresses the way economy, society, and governance have changed to exploit the increasingly global networking of information.[13] Corporations, for example, have been transformed into networks. Top-down design of strategy invites failure in the face of diverse market dynamics in different parts of the globe. Information technology now allows the decentralized retrieval of information about market dynamics from different points in space and time and the integration of this information into flexible systems of strategy-making and flexible production systems. Small and medium businesses increasingly link across borders with large corporations to form endlessly adapting networks. "Thus, the actual operating unit becomes the business project, enacted by a network, rather than individual companies or formal groupings of companies."[14] Companies that fail to adapt to these new possibilities in the networked economy cease to dominate global markets. So the information age is not only one where a lot of States are hollowed out, but also one where we find a lot of hollowed out corporations; "lean" businesses that specialize in intermediation between financing, production, and sales on the back of an established brand.[15] Similarly States that fail to adapt to the possibilities for networked governance fail to dominate global governance. A State with an agenda of, for example, strengthening institutions of competition policy globally, will be more effective if it uses information technology for the decentralized retrieval of perspectives from diverse societies on what sort of competition policy they have and what sort they want to have to cope with the different competition dynamics in economies that are small versus large,[16] and at different stages of the development of the differing varieties of capitalism.[17] Indeed, in the literature on flexible production systems, the distinction between private and public organizations becomes increasingly blurred, so public sector organizations find it hard to resist the flexible production imperatives of their private partners. For example, Michael Dorf and Charles Sabel use the way the Pentagon creates competing collaborations of private and public partners at different levels of a project (e.g. weapon, targeting IT, delivery vehicle) so that in the end the best set of

13. CASTELLS, *supra* note 4.
14. CASTELLS, *supra* note 4, at 177.
15. *Id.* at 176.
16. *See* MICHAL GAL, COMPETITION POLICY FOR SMALL MARKET ECONOMIES (2003).
17. *See* PETER. A. HALL & DAVID SOSKICE, VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE (2001).

private-public collaborations for each segment of the project might be integrated into the best whole-of-project integration.[18]

Warfare is indeed one of many governance functions that became increasingly networked in the late 20th century. If the enemy is better able than you to integrate a diaspora of local factions and warlords onto their side of the struggle, then you are likely to lose, as the Soviet Union found in Afghanistan. As a good example of this, the United States suffered limited losses in its 2001 Afghan war because it not only networked a lot of States to fight on its side of the struggle, it also networked many local warlords, local religious leaders and NGOs. Networked governance links the capability of powerful bureaucracies (like the U.S. Air-Force's smart bombs) to micro-organizational capability (such as the capability of a local warlord to know who the local Taliban are and kill them house to house). Information age governance also networks corporate with State power as modern armies use private sector contractors in the field for all manner of functions from servicing vehicles to diagnosing intelligence. In the world of networked governance even the activity that Max Weber saw as definitional of the Westphalian State—monopoly over the use of armed force—becomes diffusely networked.[19]

Networked governance means a shift in both the private and public sector from Fordist control of a systematically specialized, broken-down production system to post-Fordist steering of more volatile systems that are partially contracted-out and partly contracted-in to shifting collaborative groups that compete for growth with outsiders and insiders. According to Dorf and Sabel, this competition is part of the error-detection system in which work groups watch for flaws in the work of competing groups so they can show how their output can surpass the benchmarks set by these competitors.[20] Excellence is grounded in collaboration, detection of poor performance in competition. Everyone is learning how to continuously improve by monitoring everyone else. Monitoring and steering are therefore not only top-down. End-of-century production methods institutionalize more participatory and complex forms of self-regulation of production of public goods as well as private ones.

On Castells' view, from the 1960s other nations such as Japan and Sweden were the first movers, starting in their private sectors transcending the Fordism of American economic leadership through a move to more

18. Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998).

19. *See* PETER W. SINGER, CORPORATE WARRIORS: THE RISE OF THE PRIVATIZED MILITARY (2003).

20. *See* Dorf & Sabel, *supra* note 18.

flexible and participatory production systems (Toyotism).[21] But the United States proved a faster learner than most societies, for example taking flexible production ideas into its public sector provision of goods like defense much more aggressively than the Japanese State whose own private sector had taken so many of the original important leaps. Rapid application by the United States of Japan's productions system is partly attributable to superior institutions of learning in the United States, a theme visited in the next section.

E. *Be Creative and Assertive at Nodes of Networked Governance*

At the time of his seminal writings, Frederick von Hayek may well have been wrong that central planning could not work because States would never have satisfactory local knowledge of what was needed.[22] A large Westphalian State, Hayek believed, lacks contextual wisdom in its top-down planning, rendering it incapable of the synoptic wisdom to understand how the economy works. He therefore prescribed spontaneous ordering through the price signals of the market as a better institutional design than state planning. In conditions of Fordist production, it is doubtful whether Hayek was right. In the capitalist world, coordinated market economies seem to do better in certain market niches than liberal market economies (and vice versa).[23] As the World Bank's East Asian Miracle report[24] documented, the late industrializing states of Asia flourished through a developmental state model, as Japan did after the Meiji Restoration in the 19th century,[25] that involved quite a heavy hand of state planning. For this reason, the Soviet economy seemed to grow faster than the West for most of its existence up to the 1970s.[26] German national socialism also seemed a formidable production machine mid-century. The German and Russian war production capabilities seemed so formidable during the heyday of industrial capitalism that had they been turned against the Franco-Anglo-American capitalist axis, instead of turned against each other on the Russian front, it would have been the economies with the greater centralized planning capabilities that would have prevailed against the more liberal economies.

According to Castells, the Soviet economy and the Soviet war machine finally fell behind the West not because it could not manage

---

21. CASTELLS, *supra* note 4, at 177.
22. FREDERICK A. HAYEK, THE ROAD TO SERFDOM (1944).
23. *See* HALL & SOSKICE, *supra* note 17.
24. WORLD BANK, THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY (1993).
25. *See* 3 CASTELLS, *supra* note 4, at 11, 212–33.
26. 3 CASTELLS, *supra* note 4, at 5–67.

industrialism but because it could not manage an information economy.[27] Just as according to Clegg's analysis late medieval towns were nodes that pried open cracks in feudal circuits of power, internet companies might similarly be conceived as nodes of private governance that have the unintended effect of splitting open the industrial and military power of the Soviet bloc.[28] An information economy cannot be centrally planned; it can only be centrally facilitated and coordinated. The ideas, the networked connections, the new directions, must come from below. Clifford Shearing and his co-authors Jennifer Wood, Scott Burris, and Peter Drahos take off from this new contemporary relevance of the Hayekian analysis of impoverished local knowledge under state planning, and instead of moving to an unregulated market prescription move to a nodal governance prescription.[29] A dense network of decentralized governance is impossible for anyone to understand synoptically. We only understand bits of the network that we can monitor directly. While governance cannot encompass synoptic planning, actors can govern nodally. They can see enough of what is going on to clarify that if they can get other key actors who control different strands of a network of governance to collaborate at a particular node, those strands can be tied together into a web of controls. Nodal partnership can grasp together a set of strands of governance to produce effects that can be monitored (albeit imperfectly) to reveal that the nodal governance has or has not effected change. The shifts in this complex web of forces that mediate change may not be well understood, for any understanding that was true today may not be true tomorrow. Linking back to the Dorf and Sabel literature on flexible production systems, nodal governance is "democratically experimental."[30] It is about learning through monitoring after the event, as opposed to understanding and planning synoptically before the event.

It follows that to be influential in the emerging global information society, nations must nurture entrepreneurs of nodal governance. Peter Drahos has shown through systematic empirical enquiry how the Trade Related Intellectual Property (TRIPS) agreement that emerged from the Uruguay Round of world trade talks was the doing of a few Washington legal entrepreneurs who established nodes of global intellectual property governance such as the Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Matters with the assistance of

27. *Id.*
28. CLEGG, *supra* note 6, at 248.
29. Shearing et al., *supra* note 5.
30. Dorf & Sabel, *supra* note 18.

some key U.S. CEOs.[31] Formally powerless Washington entrepreneurs operating out of tiny offices enrolled the power of some major multinational corporations which in turn enrolled the power of the U.S. President, the European Union, and ultimately the new World Trade Organization.[32] The various nodes of governance that mattered in shaping TRIPS were often *ad hoc* creations of the entrepreneurs of nodal governance.

Such spontaneous cooperation would be hard to imagine happening in Japan. It is also harder to do in Europe where industry leaders are expected to wield their influence through channels that are more hierarchically integrated through official industry associations.[33] The entrepreneurialism that enables this kind of nodal governance in the United States may be partly a creation of the kind of education system that prevails there. It is a system that nurtures assertiveness, in contrast to Japanese learning patterns which counsel silence in the presence of people who are hierarchically senior to oneself. The American university system also nurtures a particular kind of creativity—creativity in institutional design. The more basic point is that most of the best universities in the world are in the United States. Most of the rest of the best universities are in Europe. In the humanities and social sciences, it is the European university system that has produced the most paradigm-shifting theoretical thinking, from the likes of Wittgenstein, Habermas, and Foucault in the twentieth century. This is because the European university system valorizes the deepest, most philosophically profound thought. The American academy in contrast has been shaped by a more pragmatist tradition, well exemplified by the work of Dorf and Sabel discussed above.[34] As a result, American universities produce most of the influential theoretical thinking and the best training in concrete institutional design. American law schools, for example, help to produce lawyers who think more instrumentally about rules and their effectiveness than their English common law or European civil law counterparts. This American pragmatic intellectual creativity in institutional design seems an underestimated reason for the disproportionate influence in nodal design of American entrepreneurs of governance.

---

31. *See* PETER DRAHOS & JOHN BRAITHWAITE, INFORMATION FEUDALISM 61–120 (2002) [hereinafter DRAHOS & BRAITHWAITE, INFORMATION FEUDALISM].

32. On enrollment, see Bruno Latour, *The Powers of Association*, *in* POWER, ACTION AND BELIEF: A NEW SOCIOLOGY OF KNOWLEDGE? 32 SOC. REV. MONOGRAPH 246 (John Law ed., 1986).

33. *See* BRAITHWAITE & DRAHOS, *supra* note 2, at 488–94.

34. *See* Dorf & Sabel, *supra* note 18.

F. *Concentrate Technical Competence at Nodes*

Another reason developing countries were utterly outmaneuvered with TRIPS was that none of them had people with technical competence in intellectual property on their negotiating teams for the Uruguay Round.[35] Again the United States' advantage here was partly a legacy of its pragmatic education system. Most of the best intellectual property lawyers in the world are Americans, even if most of the best work on the philosophy of intellectual property is done outside the United States.

The first of our seven elements for influence in global politics was to "Concentrate Nodally the Power under Your Direct Control." For the same reasons adduced in that section, the current heading might better read "Concentrate Nodally the Technical Competence Under Your Direct Control." It is no use having wonderful intellectual property lawyers if you do not organize them to turn up in Geneva to advise you when something like TRIPS is being negotiated. Again, the United States is extremely accomplished at understanding that in an information economy knowledge is power more so than ever. This is a point reinforced by a finding of Drahos that the United States mobilizes technical expertise to support its negotiating positions more effectively than most States, particularly developing States.[36]

G. *Shift Forums*

Drahos and I reached the following conclusions about forum shifting in the processes whereby business regulation has globalized:

- When the post-World War II U.S. has not been able to get multilateral agreement on what it wants, it either attempts to shift decision-making to an alternative multilateral forum or shifts to a sequence of bilateral deals with other key states. These accumulated bilaterals often later set the framework for a new attempt at multilateral agreement.
- There are three basic strategies of forum shifting around international organizations:
  - (a) moving a regulatory agenda from one organization to another;
  - (b) abandoning an organization; and
  - (c) pursuing the same agenda in more than one organization.

---

35. *See* DRAHOS & BRAITHWAITE, INFORMATION FEUDALISM, *supra* note 31.
36. BRAITHWAITE & DRAHOS, *supra* note 2, at 134–37.

- The first two strategies are only widely used by the United States, and have only been practically available to the United States, the EC, and (formerly) the USSR. Forum blocking, preventing an international organization from acting as a forum for regulatory development in the first place, is an additional fourth strategy used by major players.
- Strong states forum shift to fora that embed the principles most valued by them for the regulatory problems at issue. For example, the principle that knowledge is the "common heritage of mankind" was defeated by shifting intellectual property issues from UNESCO and UNCTAD to the World Intellectual Property Organization and the GATT where knowledge was treated as property subject to trade principles.[37]

Drahos and I are now not sure that our level of pessimism about forum shifting being unavailable as a weapon of the weak was justified. Our mistake in *Global Business Regulation* was to ignore our own data on how common it was for the fora that matter not to be formal or majoritarian, at least at first. TRIPS might have ended up an agreement in an institution voted upon by the majority of the world's states, but we have just seen that it grew from nodes of governance at which few states and even a minority of American business were engaged.

In the final section of this essay we will return to the possibilities for forum shifting by developing countries. For now, all we must note is that the historical fact of the matter is that most of the forum shifting that remade the world in the last half of the twentieth century was American. This is our final element of how American power works.

III. Can Developing Countries Mobilize These Seven Dimensions of Power?

A. *Concentrate Nodally the Power under Your Direct Control*

No developing country has much economic power under its control, and only a few have the military power that follows from having weapons of mass destruction. In other words, there is not much power to concentrate. Even so, it must be said that many developing countries have some limited old-fashioned Westphalian State capacity. The World Bank and other development agencies, under their "good governance" policies, stand ready to assist developing countries develop state capacity. This is often a

37. *Id.* at 28–29.

form of assistance that developing countries should grab with both hands when it is offered.

This will not take them far, however, in confronting the very institutions that disable them from acquiring the power required to resist their impoverishment. Here is why the prescription to network governance has been linked in this section to the prescription to have state capacity concentrate the power under its direct control. For developing countries, the concentration prescription does not get them far when they have little to concentrate, but the networking prescription might take them far now that they live in a world of networked governance where a galaxy of points of concentrated power can be enrolled into a network. The first possibility is to enroll into a network the power of other developing countries that share structurally similar interests on particular issues.

Drahos and I,[38] like others,[39] concluded that Australia, a State with comparatively little economic or military power under its direct control, had a significant influence on the Uruguay Round of world trade talks by initiating the Cairns Group of agricultural exporting nations. This group had limited success in getting agriculture into the Uruguay Round and in securing modest concessions on access to European, U.S., and Japanese agricultural markets.

Consequently, Peter Drahos began to advocate the pursuit of an elaborated version of the Cairns group by developing countries. His other model was the Quad, a group composed of the United States, Canada, the European Union, and Japan; which the United States led so effectively during the Uruguay Round. Basically, the United States would develop a trade policy its closest trading partner—Canada—could live with, and then open the real negotiations with the European Commission (EC). Once the United States and the EC agreed to push a common position, Japan would usually fall into line with it. In that way, the position of the Quad would prevail. This inspired Drahos to advocate a developing country Quad, in which leading developing economies with large markets, notably China, India, and Brazil, would lead a trade policy to reduce poverty around which most developing countries might rally. At the very least this would make the developing countries a group the Quad would have to negotiate with in future trade rounds, as the Quad was forced to do with the Cairns Group during the Uruguay Round. Drahos's idea was to avert the situation that had occurred with TRIPS, where all the key deals were done in Geneva without any developing country representative being in the room. It was also to be more creative and aggressive than the 1986 group of ten

38. *Id.*

39. *See, e.g.*, Richard A. Higgott & Andrew F. Cooper, *Middle Power Leadership and Coalition Building: Australia, the Cairns Group, and the Uruguayan Round of Trade Negotiations*, 44 INT'L ORG. 589 (1990).

developing countries that had attempted unsuccessfully to block the U.S. proposals for new themes for the GATT that included intellectual property, services, and investment. Fundamentally, what Drahos now calls "A Democratic G Group" should learn lessons from both the Cairns Group and the Quad to realize the seven identified elements that have been the key to U.S. power.[40] For the moment in this section, we are addressing just two of these.

The United States manages to concentrate its power in trade negotiations by moving backwards and forwards between its multilateral agenda and, when that is momentarily thwarted, its bilateral negotiations, which include the individual picking off of politically and economically significant States. These bilaterals progressively lock more States into the preferred U.S. multilateral outcome until the point is reached where the United States can attempt to nail that multilateral agenda again. It is a coordinated strategy. Developing countries need a similarly coordinated response, and networking is the only option for developing countries to concentrate their collective power into coordinated resistance to U.S. bilaterals and multilateral agendas.

Drahos's Democratic G Group is a proposed node to tie such concentrated power of the poor together. He calls it democratic because its constitution should provide a model of what the entire WTO could be—a forum where leadership is genuinely rotated and where every member's vote counts. After two years of advocating this in various public fora, Drahos was of course delighted to see the leadership of Brazil with China, India, and South Africa at the Cancun Ministerial Conference in making the G-20 a force in the WTO. It was a step in the direction he had been advocating. Indeed, it accomplished the hardest part of such a networking project—getting the massive developing markets of China and India to work together, something that had in the past proved diplomatically tricky, notwithstanding the structural similarities of the interests of these two mega-states. But the G-20 has a long way to go to meet Drahos's vision for the Democratic G Group. Like the Cairns Group, the G-20 has been so far single-issue in its orientation—blocking the Doha Round of world trade talks until it includes meaningful proposals for improved developing country access to Northern agricultural markets. Unlike the Cairns Group, the G-20 is not highly organized with a Secretariat to form the node that networks high quality analytical work. Also working against the G-20 is evidence that the United States, concerned about the G-20, is offering members inducements to defect from

40. *See* Peter Drahos, Towards a Democratic G-Group in the WTO (2004) (unpublished manuscript)[hereinafter Drahos, Towards a Democratic G-Group].

it.[41] This will work for the United States if members see the G-20 as no more than a blocking coalition that will inevitably remove the blockage once some concessions have been made by the United States and Europe. To hold the network fast against U.S. bribes to defect from it, the G-20 must have a visionary agenda for a better world system that can be ap-

41. Below is a table prepared by Peter Drahos on "Dividing and Conquering—the use of forum-shifting in trade to break up developing country groups." The countries in italics represent the key leaders of the G-20. The table shows that being an ex-G-20 state or a non-G-20 state assists with being offered a Free Trade Agreement with the US. *Id.*

.	G20	Ex –G20	Cairns Group	FTA with US?
Argentina	Y		Y	
Australia			Y	Y
Bolivia	Y		Y	Proposed
Brazil	Y		Y	
Canada			Y	Y (NAFTA)
Chile	Y		Y	Y
China	Y			
Colombia		Y	Y	Proposed
Costa Rica		Y	Y	Y (CAFTA)
Cuba	Y			
Ecuador		Y		Proposed
Egypt	Y			
El Salvador		Y		Y (CAFTA)
Guatemala		Y	Y	Y (CAFTA)
Honduras				Y (CAFTA)
India	Y			
Indonesia	Y		Y	
Malaysia			Y	Proposed
Mexico	Y			Y (NAFTA)
New Zealand			Y	
Nicaragua		Y		Y(CAFTA)
Nigeria	Y			
Paraguay	Y		Y	
Pakistan	Y			
Peru		Y		Proposed
Philippines	Y		Y	
South Africa	Y		Y	Y (SACU) Being neg.
Tanzania	Y			
Thailand	Y		Y	Proposed
Uruguay			Y	
Venezuela	Y			
Zimbabwe	Y			
	19	7	17	

proached by feasible incremental steps. That vision is also needed to divide the United States and Europe politically in their resolve to crush the group. The key to accomplishing that rests with the ability of the G-20 to create an inspiring vision for U.S. and European NGOs to work with it against their own states.

Northern NGOs are crucial to understanding the possibilities for a more just world. The Third World prior to 1989 could pull off some victories against the First World when they could get the backing of the Second World (the Soviet bloc). They also did better at attracting foreign aid prior to 1989 because they could play the First World off against the Second. A conventional reading of these facts is that they are simply a story of schism based on the geo-politics of the cold war. While this is a big part of the story, it is also a tale about States that were agents of multinational corporations and States that were not. We have seen how TRIPS was about the CEOs of a number of U.S. multinationals enrolling progressively more States to their agenda of a new world intellectual property order.

The division between First World States that were happy to be agents of their multinationals and Second and Third World States that were not fell with the Berlin Wall for the following reasons. Many of the new rulers of the old communist States (somewhat naively) believed at first that multinational corporations would move in on a wide front, that their indigenous entrepreneurial talents would soon give birth to their own international businesses, and they would quickly become a business culture. The First World could now count on the Second World to vote with them on challenges to a liberal international economic order, to vote in favor of deregulation and against international regulation of business. In the two-level game of international politics,[42] developing country leaders looked across the table to the row of newly neoliberal faces and decided they now had to turn around to convince their domestic constituencies that they should be one of the early mover developing states who jump to neoliberalism. It was a move based on weakness, based on their inability to imagine ever putting together a veto coalition against George H.W. Bush's New World Order.

That incapacity for developing State imagination ended with the collapse of the Multilateral Agreement on Investment (MAI) in 1998. Once TRIPS had been won in 1995, liberalizing investment was the new number one priority of the U.S.-Europe business axis. One MAI negotiator boasted that "we are writing the constitution of a single

42. *See* Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427 (1988).

global economy."[43] How did developing countries find the courage to speak out against the MAI instead of allowing themselves to be led like lambs to the slaughter as they had done with TRIPS (which also structurally disadvantaged them as net importers of intellectual property rights)? One answer is that they found a new ally with whom they could forge a veto coalition. This was the Northern NGOs that opposed the MAI—the environmental, consumer, women's, labor, and other citizen groups that rejected it. In the MAI campaign, these groups harnessed the technology of the internet for global campaigning at an unprecedented level. Just as a veto coalition of the Third and Second Worlds could block global corporate agendas during the heyday of UNCTAD and the New International Economic Order in the 1970s, developing countries learned through the MAI that a veto coalition of developing countries and international NGOs could work. They applied this new confidence to blocking the Millennium Round of the World Trade Organization in Seattle a year later (1999) and (for the moment) the Doha Round through the agency of the G-20 in 2003.

In retrospect it would have seemed crazy to developing countries that puny NGOs could be as useful an ally as the mighty Soviet block. But we can also see that, in the two-level game of international politics,[44] while NGOs contribute much less at the international table than the Soviets did, they contribute much more at domestic tables. There are, for instance, more internet campaigners who vote in U.S. Presidential elections than communists, and unions have been serious campaign contributors to the likes of Bill Clinton, Al Gore, and John Kerry.

Developing nations and Northern NGOs had very different interests on matters such as the MAI. So did developing countries and the Soviet bloc. You don't have to agree with your allies in a veto coalition on what you want. You only have to agree on what you want to block. There is an interesting symmetry between the Third World/NGO campaign to block the MAI and the Third/Second World campaign of the 1970s for a Code of Conduct for Transnational Corporations in the aftermath of the Lockheed bribery scandal and the involvement of ITT in the coup that installed General Pinochet to the Presidency of Chile. The United States and Europe finally killed the Code of Conduct on Transnational Corporations in 1995 because it imposed a large set of ethical obligations on multinational corporations without giving them sufficient rights to invest wherever they wanted. The Multilateral Agreement on Investment, which

43. Renato Ruggiero, Remarks at the time of the 1996 ministerial meeting at the World Trade Organization (WTO) (Dec. 9–13, 1996). *See* Press Release, UNCTAD, UNCTAD & WTO: A Common Goal in a Global Economy, TAD/INF/PR/9628 (Aug. 10,1996).

44. *See* Putnam, *supra* note 42.

NGOs and developing countries killed, did just the opposite. It gave corporations a lot of new rights to free movement of investment (and protection from expropriation) without imposing obligations on investors to protect the environment, to honor consumer protection standards, to guarantee equal employment opportunities for women and other core labor standards, to respect human rights and to assist the development of the countries in which they invest through transfer of technology to locals.

After the failure of an agreement that imposed lots of obligations on multinationals and gave them few rights to a more liberal investment regime, and then the failure of another agreement that offered them lots of rights and no obligations, after win-lose and lose-win for the developing countries and multinationals respectively, perhaps it is time for win-win? In other words, maybe its time for an agreement that imposes heavier development, human rights, and environmental obligations on multinational corporations in return for a more liberal global investment regime. At least it seems clear at the moment that in this contest of principles, either neither side will prevail in entrenching their principles into international law or both sides will have to allow in some of the principles of the other.

Another way of looking at the implausible accomplishment of the defeat of the MAI is that while States were very divided in their support for it, NGOs (North and South) were reasonably unified in their opposition. In Robert Putnam's empirical analysis of the Bonn economic summit of 1978, he exposed a critical theoretical weakness of privileging unified Sates as actors.[45] This summit secured agreement on crucial elements of the Tokyo Round of the GATT (substantial tariff reductions and a subsidies and countervailing duties code), particularly from a reluctant France. The summit also achieved pump-priming commitments by the trade surplus States of Germany and Japan and oil price deregulation by the United States. According to the Putnam analysis, the summit accord was only possible because all key States were internally divided. Influential minority factions within the economic policy communities of the key States forged a winning global coalition of minority factions. A coalition of President Carter's international and economic advisors favored oil price decontrol, but this was opposed by the President's domestic policy advisors and a strong majority in Congress. German pump priming was favored only by a small minority of officials in the Economics Ministry

45. *See* ROBERT D. PUTNAM & NICOLAS BAYNE, HANGING TOGETHER: COOPERATION AND CONFLICT IN THE SEVEN POWER SUMMITS (1987); Putnam, *supra* note 42; Robert D. Putnam & Randall Henning, *The Bonn Summit of 1978: A Case Study in Coordination, in* CAN NATIONS AGREE? ISSUES IN INTERNATIONAL ECONOMIC COOPERATION (Richard N. Cooper et al. eds., 1989).

and the Chancellery, leaders of labor unions, and the left wing of the Social Democrats, but opposed by the Free Democrats, the Bundesbank, most of the business and banking community, and most economic officials in the government. Expansionism by Japan was supported by a coalition of business interests and LDP politicians of modest power, but implacably opposed by the Ministry of Finance, the most powerful actor in Japanese government. In each key State, "advocates of the internationally desired policy acted (in the words of one of the Americans) as a kind of benevolent 'conspiracy', and in each case they signaled to their foreign counterparts that additional international pressure would be welcome."[46] Other empirical research suggests that at least half the time during international crises, top national decision makers are not unified.[47]

Internationally, NGOs often, though far from uniformly, have the advantage over the stronger corporate and State players in the world system of a more unified position on the principles at issue. Take the example of the peace movement which believes in peace everywhere and is always opposed to war crimes. Whether States believe in peace or war, and whether they will stand up against war crimes, depends on who is on the other side. Hence it becomes possible for NGOs with a unified pro-peace value position to join with peace loving States to institute an International Criminal Court against the opposition of states as powerful as the United States and China.

While geopolitical strategic schisms can be pried open by weak players like NGOs to divide and conquer strong States, it is hard for them to pull this off without a seat at the international table. Consequently, strategic trade schisms are what they exploit to divide and conquer corporate power. This they can do more readily, and when they do, the corporate schism becomes a rift among the state clients of corporate power. In the 1970s green groups in the United States successfully lobbied for amendments to the Clean Air Act regarding ozone-depleting substances. The United States and Sweden were the only countries that banned Chlorofluorocarbons (CFCs) in the 1970s. The U.S. environmental movement succeeded on this in 1977 while the European groups failed because U.S. industry opposition was simply less fierce. Why? The dominant U.S. manufacturer of CFCs, DuPont, also had global leadership in developing CFC substitute technology. DuPont rightly wondered if European competitors would be forced to buy the DuPont technology if they rolled over on the ozone campaign. Once the U.S. environmental groups had won the ozone campaign, it clearly became

46. Putnam & Henning *supra* note 45, at 107.

47. *See, e.g.*, GLENN H. SNYDER & PAUL DIESING, CONFLICT AMONG NATIONS: BARGAINING, DECISION MAKING AND SYSTEM STRUCTURE IN INTERNATIONAL CRISES (1977).

the case that U.S. business, and therefore Ronald Reagan, was now on the side of the greens. They had a strategic trade interest in forcing European and Japanese business to move up to the standards they had already been forced to meet (and in doing so buy the U.S. CFC-substitute technology). We are all familiar with this history. The Montreal Protocol was signed in 1987 and still stands as the most effective global environmental agreement ever signed, making a real difference to the closing of the ozone hole.

The lesson is that it is possible for NGOs to use strategic trade thinking to divide and conquer business and therefore States. Unabashed green activists could enroll Ronald Reagan as their political agent. While unified global business will almost always defeat a unified green movement, an alliance of a unified green movement with American business can defeat European business. Similarly, but in a different direction, an alliance of united NGOs and European business can defeat American business. The Global Business Regulation study gives examples of both these scenarios.[48]

Structural realist international relations theory is misleading because packed inside its state billiard balls are often even bigger balls than the State itself in the form of multinational corporations. Major States are more like loosely cemented conglomerate rocks than billiard balls. When some of their biggest conglomerates break off, mighty states can crumble into impotence on an issue. Conversely, its breakaway fractions can coalesce with minority factions from other States to form winning global coalitions. This is why Putnam's two-table metaphor is more useful: turning each billiard ball into a table of domestic politics across which debate ranges, with all those domestic voices also sounding out allies from other national tables to join hands with them at international negotiating tables.[49]

The MAI campaign is a lesson in the strength of weak ties[50] in the internet age. The new NGO networks which are the model mongers[51] of the information age do not operate on the principle of "solidarity forever." They craft fluid, loosely coupled coalitions that coalesce around a specific campaign like the MAI. If they are clever in the future, they will see more and more opportunities to divide business and thereby create divisions within and between States.

Drahos's idea of the Democratic G Group is that Northern NGOs will be given something more formidable to couple with on specific

48. *See* BRAITHWAITE & DRAHOS, *supra* note 2.
49. *See* Putnam, *supra* note 42.
50. *See* Mark S. Granovetter, *The Strength of Weak Ties*, 78 AM J. SOC., 1360–80 (1973).
51. *See* BRAITHWAITE & DRAHOS, *supra* note 2, at 578–601.

networking issues as they come up.[52] If the Democratic G Group were also more genuinely democratic than a Quad-dominated WTO, and embodied a vision for tackling world poverty in the long run, NGOs would also be more politically attracted to networking with it.

B. *Have a Big Stick and Threaten to Use It*

While it's all very well that effective networking by weak players has induced the United States and Europe to negotiate seriously with them, and created a divide and conquer wedge between the big players, ultimate threats, what States can ultimately do if push comes to shove, are important to the constitution of power. Ultimately, the United States not only has the unmatched military power to effect regime change, but also has access to a domestic market which is more important than access to all developing markets combined. Finally, U.S. and European multinationals have the power to withdraw investment from developing countries, while there simply are no developing countries that can mount a comparable credible threat of capital flight from the U.S. or Europe.

Enter George Monbiot's *Manifesto for a New World Order*.[53] Monbiot presents some interesting Keynesian ideas for establishing an International Clearing Union to replace the IMF and for reforming the WTO into a Fair Trade Organization. This paper neither considers these nor other ideas for improving the deal that developing countries get from the world system. This contribution is not about the substance of what are the best reforms for the developing world but about the methods of power developing countries might use to secure an agenda that they develop more democratically. From this perspective, the important contribution of Monbiot's book is his idea of poor nations using debt as a weapon. It is based on the old insight that if you owe the bank a thousand dollars, you are in trouble; if you owe it a million dollars, the bank is in trouble. Monbiot points out that the debt crisis of developing countries reached the point in the late twentieth century where the poor world owns the rich world's banks.

> It would be misleading to make a direct comparison between the size of the poor world's debt—some $2.5 trillion—and the size of the combined reserves of all the world's central banks: some $1.3 trillion. Much of the debt has already been "discounted": its real value to the banks which issued it, or to the "secondary debt" traders who have bought it, is less than its paper value. As most of the debt is not one between governments, but rather a

52. Drahos, Towards a Democratic G-Group, *supra* note 40.
53. MONBIOT, *supra* note 1.

> debt between governments and the commercial banks and the IMF and the World Bank, several intermediaries and complicating factors inhibit the translation of the banks' liabilities into national stocks of gold and dollars. Even so, the figures provide us with a rough idea of both the size of the weapon, and the incapacity of any government or financial institution to resist it, which has been handed to the poor by the rapacity of the rich.[54]

Monbiot points out that there is a history of rich countries punishing debt defaulters. But there is no point in developing countries collectively responding to this simply with a coordinated default of all dumping their debts simultaneously. This is tantamount to the developing countries throwing away their big gun before it had fired a shot. Instead, Monbiot commends the IMF/World Bank model of attaching conditions to the handling of debt:

> Just as the IMF has threatened to ruin the economies of the poor nations if they do not implement the reforms it demands, the poor world should threaten to ruin the economies of the rich nations if they do not agree to its terms. The point of possessing a terrifying weapon is that you do not have to use it; the fear of the weapon is sufficient to ensure that other people do as you demand.[55]

This is another divide and conquer threat. Monbiot believes that the threat of developing countries inducing a panic that no financial market could resist would cause the enemies of the poor to turn upon each other. The States that are clients of the most financially exposed banks would be the first to come under pressure from its finance sector to be responsive to the demands of the developing countries. As with the establishment of the G-20, the idea is that several desperate developing States who have little to lose politically would announce an intention to collectively boycott debt repayment to a named date. They would have little to lose because the forbearance of their people has been stretched beyond its political limits. Simultaneously mobilizing support for the boycott from international NGOs, the small group of defaulters would urge other debtor nations to join them by announcing the same intent unless their demands for a more just international trading system were met. Monbiot believes that so long as there was a critical mass of initial defiant States, the threat of default could become contagious as nations found safety in numbers.

It would be uncertain, however, whether developing countries could hold together this collective action challenge. But it is also uncertain

54. *Id.* at 174–75.
55. *Id.* at 175–76.

how effective rich States could be in offering bribes to States to defect from the boycott. The challenge on both sides would be considerable. On the side of the rich States, they of course could not afford to pay a bribe equal to the national debt of nation after nation. As they paid off one State to defect from the boycott they would create a moral hazard problem. That is, the bribe to defect would cause other states to join the boycott so they could be paid a bribe to defect from it. The challenge for the boycotting poor nations would not be to convince rich nations that they were certain to pull the boycott off. It would be to convince rich nations that there was sufficient prospect of the boycott working for the costs of bribing poor nations to defect, or not to join, to be unbearable for the rich. Part of the strategy for making it more probable that the poor countries could manage this gigantic collective action challenge would be to demonstrate that they can manage more modest challenges lower down an enforcement pyramid.

C. *Have a Responsive Regulatory Strategy*

One option for a graduated approach to a debt boycott would be to first target banks domiciled in nations with vulnerable financial systems and with domestic NGOs who would be particularly active in their support for the Democratic G Group's demands.[56] Once the most susceptible and sympathetic target nation prevented the debt boycotting of its banks by signing on to the proposals of the Democratic G group, the second most susceptible and sympathetic nation would be more likely to follow when it became the second target, and so on with the third and fourth targets until a hold-out rich nation was encountered. The idea would be, however, that before this graduated escalation got too far the rich nations would see that the poor nations meant business and therefore would see the incentive to sit down with them to renegotiate the world trade and financial order.

It would be premature at this point to design an actual enforcement pyramid. But some preliminary remarks toward such a design are in order. Obviously, there would be no point in displaying an intention to "watch-list" the United States as an importer (as in the U.S.'s own pyramid of Figure 1). But given the importance of TRIPS to the U.S. and Europe in the information age, an escalation in the collective defection from more and more of the U.S.'s intellectual property agenda could be plausible starting with an unbridled compulsory licensing of life-saving drugs, followed by a possible suspension in the recognition of foreign patents, and then collective resignation from the WTO. Moreover, given

56. Such as root and branch reform of the IMF and WTO.

that developing countries have weaker trade and investment threats at their disposal than rich nations, it would be important to consider non-trade sanctions and rewards that touch the soft spots of rich nations in the politics of escalation and de-escalation. For example, Europe is worried about illegal immigration from Africa. There are, presumably, a set of things Africa could do to stem this flow at the source, and other things it could refrain from doing that would make things much worse for Europe. Terrorism prevention, intelligence, and financing is another major soft spot for the North Atlantic powers, where greater and lesser cooperation from developing countries is of enormous geo-political significance. Commitments of major industrializing economies such as China, Indonesia, India, and Brazil to global warming countermeasures are of growing importance to rich nations. It would be possible to draw up a very long list of obligations that rich countries want poor countries to sign on to, from tax havens and money laundering to trading in nuclear materials. Sets of these could be organized as layers of a progressively more politically unpalatable pyramid, with commitment to undertake all obligations at the first layer suspended first, followed by another pre-announced set of commitments that would be suspended when the first set of suspensions produced no response, and so on. At the peak of the pyramid of politically unpalatable measures for the rich countries could be the most politically unpalatable measure of all, George Monbiot's coordinated debt default. By signaling the political will to escalate through the entire pyramid if needed to bring the rich nations to their negotiating table, and then by actually beginning to escalate through the less politically unpalatable options at the bottom of the pyramid, the poor countries could pressure rich nations to succumb to the Democratic G group agenda. All rich nations would begin to doubt the analysis that poor nations lack the collective action capability to move up the pyramid. This would cause political division in all rich nations fuelled by NGOs sympathetic to the poor countries' anti-poverty agenda.

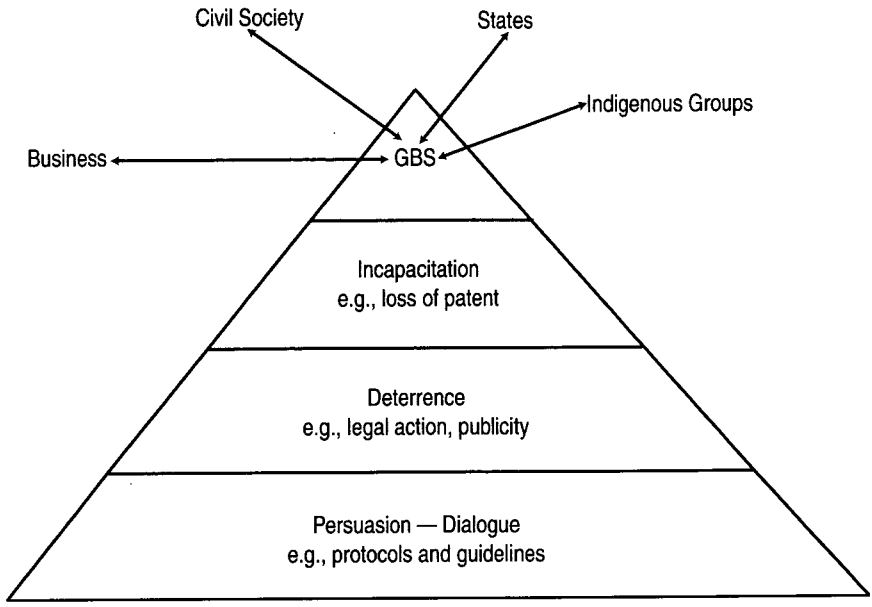
Peter Drahos has developed a networked governance approach to pyramidal escalation.[57] The key idea is that instead of simply escalating to tougher and tougher sanctions as a State or group of States rises up a pyramid, wider webs of networked opposition are triggered by the escalation. That is, escalation means enrolling more actors to put pluralized forms of pressure on the regulated actor. A simple example is Drahos's

57. *See* Peter Drahos, *Towards an International Framework for the Protection of Traditional Group Knowledge and Practice* (2004), *at* http://ro.unctad.org/trade_env/test1/meetings/tk2/drahos/draft.doc (draft paper prepared for the Commonwealth Secretariat). *See also* John Braithwaite, *Responsive Regulation and Developing Economies*, *in* GLOBAL COMPANIES, GLOBAL REGULATION (Ngaire Woods ed., forthcoming 2005).

international enforcement pyramid for Traditional Group Knowledge and Practice.[58] This pyramid might be mobilized, for example, by a cluster like the twelve countries that in 2002 formed in Cancun the Group of Like-Minded Countries. That group was of the same mind on the protection of traditional knowledge like indigenous crafts and medicines and the illegal acquisition of genetic resources without compensation by Northern multinationals. A node of governance that such a group of States might institute would be a Global Bio-Collecting Society that would track patents in Traditional Group Knowledge and Practice. In Drahos's pyramid at Figure 2, the Global Bio-Collecting Society is a nodal coordinator of many other actors at the peak of the pyramid. The Global Bio-Collecting Society might sometimes take its own enforcement action such as opposing a patent where an indigenous group is unable to do so. But on other occasions it would provide information to patent offices, indigenous groups or NGOs that might then take their own action. Technically helpful analyses of patents might enable knowledge-poor States and NGOs to widen webs of networked opposition by communicating the implications of those analyses to wider communities of concern.

58. Drahos, *supra* note 57, at 39–42.

FIGURE 2
INTERNATIONAL ENFORCEMENT PYRAMID FOR TRADITIONAL GROUP KNOWLEDGE AND PRACTICE.[59]



D. *Be Creative and Assertive at Nodes of Networked Governance*

Obviously crafting any enforcement pyramid of the sort described in the previous section would require enormous creativity and assertiveness to then display it to the rich countries. Second track diplomacy is one path toward such creativity and assertiveness. Retired diplomats and NGOs with nothing to lose can participate in second track diplomacy both to define a set of demands for reforming institutions such as the IMF and WTO and to devise options for an enforcement pyramid to bring rich nations to the table for serious negotiations around those demands. When today's diplomats see their retired mentors settle upon some radical proposals for a new world order, this can give them confidence to be creative and assertive in first track diplomacy. Engagement of NGOs in second track processes to foment reform ideas might also increase NGO buy-in for when the real North-South struggle begins. NGOs like trade unions could also foster confidence-building in such a difficult political enterprise by reflecting on their own history of struggle—on how impossible it would have seemed to the workers of the 19th century that by the early decades of the 20th century workers would have

59. *Id.* at 41.

solved their collective action problems to stand united against employers in national unions. Most importantly, NGOs could make a deliberative contribution to the needed creativity and assertiveness for crafting nodes of responsive networked governance.

E. *Concentrate Technical Competence at Nodes*

The United States and Europe might have the best universities in the world, but Northern States cannot count on the loyalty of their universities in a struggle between the rich and the poor. My argument is that any credible strategy to transform global economic institutions will involve Northern as well as Southern NGOs collaborating with developing nations on reform agendas. What is needed is a set of nodes of governance at which the best technical competence to be found among all those citizens of the globe who believe in a world with less poverty can be concentrated. Northern charitable foundations need to be persuaded to fund such a convening of the most acute analytical capabilities.

In Peter Drahos's discussion of the Democratic G Group, he also suggests pooling and sharing analytic resources among poor countries:

> India, for example, could take the lead on investment and competition, Brazil on agriculture and services, South Africa on intellectual property and special and differential treatment and so on. Other developing countries would join those working committees in which they had interests and expertise, perhaps forming sub-committees on particular issues (e.g. Kenya could form a sub-committee on trade in genetic resources).[60]

For a poor country suffering negotiating fatigue in Geneva from the demands on its limited technical resources, putting its trust in monitoring Kenya as its agent on genetic resources is not a perfect solution. It is, however, a better solution than what poor countries presently do, which entails ignoring the issue or putting their trust in the United States and the EU. Drahos's conception of the Democratic G Group is that recommendations would be formulated in a deliberatively democratic fashion. Member states would not be obliged to reach a consensus position, and neither would NGOs who might be attracted into the technical deliberation. Working committees would simply develop a technical analysis of a given issue and ensure that the discussion of the analysis followed a deliberative procedure. The analysis might or might not lead to a cluster of

60. Drahos, Towards a Democratic G-Group *supra* note 40; *see also* Peter Drahos, *When the Weak Bargain with the Strong: Negotiations in the World Trade Organization*, 8 INT'L NEGOTIATION 79–109 (2003).

States and NGOs developing negotiating solidarity around that analysis and crafting an enforcement pyramid to help realize its prescriptions.

F. *Shift Forums*

In the discussion on the responsive regulatory pyramid, one of the more extreme options toward the tip of the pyramid was a collective developing country pull-out from the WTO. In Monbiot's proposal for a Keynesian International Clearing Union as an alternative to the IMF, he suggests that poor nations do not need to wait for rich countries to establish it: "They can found it themselves, fix the value of their currencies against the bancor (or whatever they might call it), then invite the rich countries, at the point of their financial gain, to join."[61]

In a world of networked governance, as opposed to government by a hierarchy of sovereigns, where the key sites of governance are more often nodes of informal governance of the networked collaboration, there is more flux in the forums that matter. In Clifford Shearing's vision of nodal governance of security in South African townships, if a community peacemaking committee falls under the control of some tyrannous faction, dissatisfied members of the community are counseled simply to abandon it and to start a new peace committee.[62] It is a lot easier than starting a new police force or a new court system. Nodes of governance attract support from citizens in this case as an alternative to South African state structures of governance if people find the peacemaking committee solves their security problems in dangerous communities where personal safety is a big issue.

Let us return to the assertiveness of the Washington legal entrepreneurs who started the process of shifting domination of the global intellectual property standards setting agenda from the World Intellectual Property Organization. They did it simply by enrolling someone else's power (the *ad hoc* power of strategically selected U.S. CEOs) to set up a completely new node of governance. The Cairns Group was a completely new node of governance created by a set of non-core players of a world trade game. Drahos's Democratic G Group was likewise not an agenda for reforming the G-77,[63] but a proposal for a new nodal focus for

---

61. *See* MONBIOT, *supra* note 1, at 178.

62. *See* Burris et al., *supra* note 5.

63. Peter Drahos sees the G-77 as a case of weakness rather than strength in numbers. The G-77 opted for broad general positions that all its members could live with and as a consequence never developed concrete strategies with bite. Unity was maintained by using the G-77 as an ideological pulpit for fine speeches on broad matters of principle. The result was Rothstein's two-track game where developing country orators made grandiose and unrealisable demands in their Geneva speeches on behalf of the G-77 and then went back to their capitals to cut the most pragmatic bilateral deals they could with the US and Europe on behalf

networking global influence. Internet communication reduces the transaction costs of nodal organization of new networks of governance. This is one reason why NGOs work less today through stable coalitions and more through issue networks. So as something like the MAI is placed on the agenda by business-dominated nodes of influence, NGO nodes of resistance to it swing into action. Nodal governance can make modeling work as a remarkably important mechanism of globalization.[64] A node of governance, like a South African peacemaking committee or a social labeling scheme to confront exploitation of child labor, can spread through diffusion as more and more actors enact the same strategy in another place. This is not the place to rehearse the theory and practice of modeling as a weapon of the weak that has sometimes transformed the world. The more limited point made here is simply the possibility, as a hegemonic State shifts a forum from one global institution to another, that nodes of governance manifesting an alternative model flow around those institutions and between the cracks of those institutions. Part of the point of nodes of governance is that instead of resisting institutionally structured power it can make it irrelevant by flowing around it to establish alternative sites of governance that people and businesses choose to support by simply ignoring the formal structure.

In a world where forums are so fluid, shifting them is both more routine and easier to do. While this might mean that a limited kind of forum shifting is more practically available to the weak, it will likely remain the case that moving the dominant bureaucratic forum where final formal decisions are made is a privilege of the powerful. While nodal governance works in considerable measure beyond bureaucracy, it also continues to work to a substantial degree by capturing bureaucracy. The difficulty is that, while it might be nodes of informal governance that do most of the real work of regime building and regime transformation, the final power to redefine the regime usually will rest with a formal structure. So in the last instance, the actor with the formal clout to desert a forum and take enough other players with them to render that final decision impotent, ultimately still has a significantly greater advantage that no amount of networking can counter. We should not be so starry eyed about flows of nodal governance to forget that bureaucratic decision-making remains central to power.

There was no important instance discovered by myself and Drahos in our fieldwork of developing countries shifting the formal forum that

---

of their own states. Drahos, *supra* note 60, at 86–87; *see also* Robert L. Rothstein, *Commodity Bargaining: The Political Economy of Regime Creation*, *in* POSITIVE SUM: IMPROVING NORTH-SOUTH NEGOTIATIONS (I. William Zutman ed., 1987).

64. *See* BRAITHWAITE & DRAHOS, *supra* note 2, at 578–601.

set the parameters of a regime.[65] There were no instances of the United States doing it before World War II either. But it was a post-war strategy recurrently used by the United States not only with intellectual property, but with regimes for financial regulation, telecommunications, labor standards, competition policy, air transport, sea transport, nuclear regulation, privacy, food standards, and pharmaceuticals. The demonstrated willingness of the U.S. to defect from regimes has engendered a no-United States-no-deal mentality in the culture of global rulemaking. Yet the United States itself is often bold enough to start building a regime with only a few partners. A classic example was its strategy with the money laundering regime of the Financial Action Task Force, where the U.S. started the regime by slowly building a "white list" of nations who would be given preferential treatment by the U.S. financial system. A decade later, after many nations had qualified for the "white list," the regime shifted to "black listing" nations based more on negative sanctions for failure to meet the regime's standards.[66] Could developing countries ever be so bold to advance such a strategy—say with social labeling by NGOs of products from nations that trade fairly with poor countries?

IV. Conclusion

Contrary to realist international relations theory, it is not the direct threat of economic or military power that is the most powerful weapon of the United States in the world system. It is more decisively the power of the United States to shift forums when it does not like what is happening in a global forum. Effective strategies of resistance are available for developing countries to better concentrate the power and technical competence they have, to better network it, and to divide and conquer by enrolling some wealthy nations or corporations to turn their power against other rich actors. These possibilities have become more profound as power has changed in the world system from a matter of balancing Westphalian government power to networked governance. Alliances of poor nations with NGOs against rich States can be more effective than alliances with the Soviet block against the First World were during the Cold War. The networked governance of Manuel Castells' information age means that weak actors might grasp a node of governance that pulls strands of networked power together. Or they might tug at a web of wealth-dominated power to unravel it. George Monbiot has shown how

65. *Id.* at 564–71.
66. *Id.* at 105–06.

poor nations have the weapon of owning the rich nations' banks.[67] For this big stick to be credible, clusters of poor nations must craft a responsive regulatory strategy to render the escalation toward using this big stick appear inexorable. A priority for poor nations is to make this big stick credible by demonstrating that they have the political capacity to escalate toward its use. One of Peter Drahos's important recent insights is that in a world of networked governance, pyramidal escalation can mean weak actors, wielding only puny sanctions, can escalate to enrolling more and more actors of increasingly greater clout to a project of networked confrontation with the strong.

67. MONBIOT, *supra* note 1.